IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-1-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.No.1171 of 1994

and

C.M.P.No.9164 of 2006

G.Raju .. Appellant/ Plaintiff

vs

1.S.K.R.Thiyagarajan
2.Manickam
3.Sivaji
4.R.Rajeswari
(RR2 and 3 impleaded as per order dated 4.7.2002 in CMP 15379/98 and R4 impleaded as per order dated 4.7.2002 in CMP 15377/99) .. Respondents/ Defendant and nil

Second appeal preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree of the Sub Court, Krishnagiri, in A.S.No.68/88 dated 21.2.1994 reversing the judgment and decree of the District Munsif, Krishnagiri, in O.S.No.200/81 dated 31.3.1987.

C.M.P. No.9164 of 2006 filed to implead the petitioner as appellant in the appeal.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.K.Doraisamy
Senior Counsel
for Mr.P.Srinivas for R1
Mr.D. Shivakumaran for
Mr.C.R.Muralidharan for R2
Mr.V.Nicholos for R4

JUDGMENT

This second appeal is brought forth by the plaintiff aggrieved over the judgment of the first appellate Court namely the Sub Court, Krishnagiri, made in A.S.No.68/88 whereby the judgment of the trial Court namely the District Munsif, Krishnagiri, granting a decree in

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

O.S.No.200/81 a suit for specific performance on an agreement for sale, was reversed by dismissing the suit.

2.The appellant/plaintiff filed the suit with the following pleadings:

The first respondent/defendant, the owner of the property namely a small piece of land measuring 40 cents in Survey No.92/2, entered into an agreement for sale with the plaintiff on 2.4.1980, wherein the consideration was fixed at Rs.29,000/-. Out of the same, a sum of Rs.5,000/- was paid as advance. It was also understood that the property should be divided into six plots leaving 12 ½ cents for the purpose of road. It was also agreed that these plots have to be sold to different persons as identified by the plaintiff, and on recovery of the sale consideration from them, it has got to be paid to the defendant, and it was to be adjusted towards the balance of sale consideration as found in the agreement. Accordingly, it was divided into six plots. In respect of plot Nos.I, II, III and IV, sale deeds were executed by the defendant by getting necessary consideration from the third parties, and thus, there was a balance of only Rs.7,600/-. The plaintiff was always ready and willing to make the said payment. Apart from that, despite the notice and telegraphic message expressing his willingness, the defendant was evading. Under the circumstances, there arose a necessity for filing the suit.

3.The suit was resisted by the defendant stating that it was true that there was an agreement between the parties; but, the time was the essence of the contract; that the plaintiff should make the payment of balance of consideration on or before 10.5.1980 and get the sale deed executed in his favour; but, he has not done so; that apart from that, there was no agreement between them by which it has got to be divided into plots; that considering the circumstances, though they were divided into six plots, the defendant executed the sale deeds in respect of plot Nos.I, II, III and IV; that when the payment was not made, there was a panchayat convened; that as per the decision taken in the panchayat, the defendant was to take the rest of the two plots namely plot Nos.V and VI, and he must execute the sale deeds in respect of the others; that accordingly, it was done; that under the circumstances, the plaintiff was not entitled for the relief on these grounds, and hence, the suit was to be dismissed.

4.The trial Court framed necessary issues, tried the suit and granted the relief. The aggrieved defendant took it on appeal, whereby the judgment of the trial Court was reversed, and the suit was dismissed. Hence, the plaintiff took up the matter on appeal before this Court.

5.Pending the appeal, the sole appellant died in the year 1999. No steps have been taken to add the legal representatives of the deceased appellant. Now, a petition has been filed by a person in CMP No.9164 of 2006 to implead him as appellant in the appeal contending that the agreement holder, who was the original plaintiff, has sold the property to one Manickam; that on his death, the legal representatives of the said Manickam have sold the property to the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

proposed party, who is to be impleaded, and hence, the appeal has got to be heard by impleading him as appellant.

6.The Court heard the learned Counsel for the proposed party. He would submit that originally, there was a decree in favour of the plaintiff; that following the same, there was a sale deed executed by him in favour of one Manickam; that the legal representatives, on his death, have conveyed the property to the proposed party, and thus, he is continuing the right to get the relief. Added further the learned Counsel that in the instant case, admittedly, there was an agreement between the parties on 2.4.1980, whereby the sale consideration was agreed at Rs.29,000/-, out of which Rs.5,000/- was already paid as advance; that following the same, as understood between the parties, it was divided into six plots; and that four plots were actually sold, in respect of which sale deeds were executed by the defendant in favour of all the four persons as identified by the original agreement holder.

7.The learned Counsel would further submit that in a case of sale of an immovable property, ordinarily time is the essence of the contract; but, in the instant case, though the agreement was entered into on 2.4.1980, even on 9.4.1980, the sale deeds have been executed within a short span of one week; that apart from that, the original agreement holder was always ready and willing to perform his part of the contract by making the rest of the payment namely Rs.7,600/-; but, the defendant was evading; that the trial Court has agreed with the plaintiff's case and granted the relief rightly, while the first appellate Court has reversed the same erroneously; that the first appellate Court has placed much reliance on the evidence of D.W.1; that there was a subsequent agreement between the parties on 8.4.1980 pursuant to a panchayat, wherein it was also agreed that in respect of two plots to be conveyed, the defendant must retain the same, and the original agreement should be given a go-by; that apart from that, there was an evasion; that in the instant case, there was no circumstance indicating the abandonment of the original agreement between the parties, and thus, so long as the defendant was duty bound to execute the sale deed in respect of the rest of the property as found under Ex.A1, the original agreement, he should be directed to execute the sale deed only to the proposed party who has got the right to continue this appeal.

8.The Court heard the learned Senior Counsel for the first respondent and also the learned Counsel for the respondents 2 and 4 on the above contentions.

9.The Court paid its anxious consideration on the submissions made. This Court is of the considered opinion that the relief cannot be granted in favour of the person who is the proposed party, on the following short ground. It was an agreement for sale entered into between the defendant, the owner of the property, and the original agreement holder who was the original plaintiff in the suit, on 2.4.1980. It is also an admitted position that the defendant has executed the sale deeds in respect of part of the property which were covered under plot Nos.I, II, III and IV, and in respect of plot

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Nos.V and VI, the suit was filed. Pending the proceedings, the property in respect of plot Nos.V and VI has been conveyed by the plaintiff in favour of one Manickam, and on his death, his legal representatives have conveyed the same to the proposed party. Now, at this juncture, the proposed party has purchased the property pending the second appeal, wherein the subject matter namely the property in question, is in dispute. It has to be further pointed out that while the proceedings were pending before the Court, the sale made by the plaintiff, cannot first be sustained. That apart, now the proposed party would submit that he has purchased the property from the legal representatives of one Manickam, who has purchased the same from the plaintiff. In such circumstances, this Court is of the considered opinion that the proposed party cannot come forward to state that he has got the right to prosecute the appeal in a case like this, as it was a suit for specific performance on the basis of an original agreement entered into between the parties. In these circumstances, this Court is of the considered opinion that the proposed party has no right to continue the appeal. Hence, on this short ground, the request of the proposed party has got to be denied.

10.For the foregoing reasons, this second appeal is dismissed as one abated, and C.M.P.No.9164 of 2006 is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:

1)The Subordinate Judge
Krishnagiri

2)The District Munsif
Krishnagiri

3. The Record Keeper,
VR Section,
High Court, Madras.

1 cc to Mr.P. Srinivas, Advocate, sr. 3526
1 cc to Mr.D. Shivakumaran, Advocate, sr. 3525
1 cc to Mr.V. Raghavachari, Advocate, sr. 3333
1 cc to Mr.V. Nicholas, Advocate, Sr. 3891

https://hcservices.ecourts.gov.in/hcservices/

JRG (CO)
kk 12/2

WEB COPY